

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 LENNY BRIKN, JR.,

10 Petitioner,

11 v.

12 UNITED STATES OF AMERICA,

13 Respondent.

14 No. C16-1042RSL

15 ORDER DENYING MOTION
16 TO VACATE, SET ASIDE, OR
17 CORRECT A SENTENCE BY A
18 PERSON IN FEDERAL CUSTODY

19 This matter comes before the Court on Petitioner's "Motion Under 28 U.S.C. § 2255 to
20 Vacate, Set Aside, or Correct a Sentence by a Person in Federal Custody." Dkt. # 1. In
21 September 2014, Petitioner was sentenced to 84 months' imprisonment and a five-year term of
22 supervised release for violating 18 U.S.C. § 924(c)(1)(A)(ii). This conviction was based on the
23 conclusion that Petitioner's underlying conduct constituted "crime[s] of violence" (conspiracy to
24 commit robbery and attempted robbery under 18 U.S.C. §§ 1951(a), -(b)(1)) and a "drug
25 trafficking crime" (attempted possession of marijuana with intent to distribute under 21 U.S.C.
26 §§ 846, 841(a)(1), -(b)(1)(D)). Petitioner now challenges the portion of his Section
27 924(c)(1)(A)(ii) sentence that is predicated on the "crime[s] of violence" and seeks resentencing
28 in light of the Supreme Court's recent decisions in Johnson v. United States, 135 S. Ct. 2551
(2015), and Welch v. United States, 136 S. Ct. 1257 (2016).

29
30 ORDER DENYING MOTION TO
31 VACATE, SET ASIDE, OR CORRECT
32 A SENTENCE BY A PERSON IN
33 FEDERAL CUSTODY - 1

The United States opposes Petitioner’s motion, noting correctly that Johnson does not affect whether Petitioner’s predicate conduct constituted “crime[s] of violence.” Dkt. # 5. At least one of the predicate offenses that Petitioner contests—attempted robbery—remains a “crime of violence” under 18 U.S.C. § 924(c)(3)(A), a provision untouched by Johnson. Thus Johnson does not affect Petitioner’s conviction and sentence under Section 924(c)(1)(A)(ii).

Accordingly, Petitioner's motion to vacate, set aside, or correct his sentence is DENIED.

DATED this 12th day of September, 2016.

Mrs Casnik

Robert S. Lasnik
United States District Judge

**ORDER DENYING MOTION TO
VACATE, SET ASIDE, OR CORRECT
A SENTENCE BY A PERSON IN
FEDERAL CUSTODY - 2**